

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICHAEL LOUIS BRISCO, 1074236,)
Petitioner,)
)
v.) **No. 3:04-CV-2687-P**
)
DOUGLAS DRETKE, Director, TDCJ-CID,)
Respondent.)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner's motions been referred to the United States Magistrate Judge pursuant to an order of reference from the district court. The findings, conclusions and recommendation of the Magistrate Judge follow:

Findings and Conclusions

On October 6, 2005, the undersigned magistrate judge entered findings, conclusions and a recommendation that this petition by dismissed for failure to exhaust state remedies. On October 17, 2005, Petitioner filed objections to the findings. He also filed a motion for leave to amend his petition to assert only those claims that are exhausted.

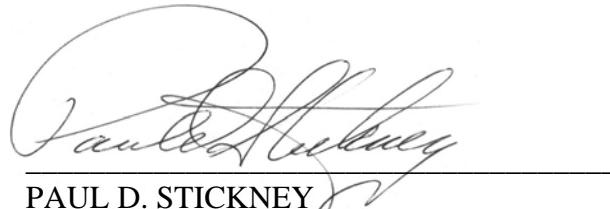
Recommendation:

The Court finds that its October 6, 2005, findings, conclusions and recommendation should be vacated. The Court also recommends that Petitioner's motion for leave to amend his

**Findings, Conclusions and Recommendation
of the United States Magistrate Judge**

petitioner to include only those claims that have been exhausted be granted.

Signed November 9, 2005.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO OBJECT**

The United States District Clerk shall serve a copy of these findings and recommendations on Petitioner. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings and recommendations must file and serve written objections within ten (10) days after being served with a copy. A party filing objections must specifically identify those findings and recommendations to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. The failure to file such written objections to these proposed findings and recommendations shall bar that party from a *de novo* determination by the district court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, the failure to file written objections to proposed findings and recommendations within ten (10) days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996)(en banc).